

RECORDING REQUESTED BY:
FOUNTAINGROVE PLAZA ASSOCIATES

WHEN RECORDED MAIL TO:

DEPARTMENT OF TOXIC
SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710
ATTN: BARBARA J. COOK, P.E.



1999 0027039

OFFICIAL RECORDS OF
SONOMA COUNTY
BERNICE A. PETERSON

AT REQUEST OF:

03/01/1999 13:34:31
FEE: \$ 34.00 PGS: 10
TT: \$.00 PAID

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT
TO RESTRICT USE OF PROPERTY
3975 Old Redwood Highway, Santa Rosa

This Covenant and Agreement ("Covenant") is made by and between Fountaingrove Plaza Associates, a California Limited Partnership (the "Covenantor"), which is the current owner of property situated in Santa Rosa, County of Sonoma, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property," the "Site"), and by the California Environmental Protection Agency, Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c) and Health and Safety Code ("H&SC") section 25398.7, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous substances as defined in H&SC section 25316 and hazardous materials as defined in H&SC section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01 Property Description and History. The Property, totaling approximately 4.34 acres, is located at 3975 Old Redwood Highway in Santa Rosa and is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. It is bounded by U.S. Highway 101 to the southwest and Old Redwood Highway to the east. This Property is more specifically described as Sonoma County Assessor's Parcel No. 058-035-24.

1.02 Remedial Measures. The Regional Water Quality Control Board, North Coast Region, issued a case closure letter on July 11, 1996 for the petroleum hydrocarbon-impacted soils at the Property. On May 29, 1996, the Site Designation Committee of the California Environmental Protection Agency designated the Department as the administering agency

to oversee investigation and remediation at the Property pursuant to H&SC sections 25262, and selected the Site for the Expedited Remedial Action Program pursuant to H&SC section 25396.6. The Department and the Covenantor entered into an Enforceable Agreement pursuant to Health and Safety Code (H&SC) section 25398.2(b). The purpose of this Agreement is to ensure the performance of necessary response actions at the Property in accordance with the standards and procedures set forth in Chapters 6.65 (commencing with section 25260) and Chapter 6.85 (commencing with section 25396) of Division 20 of the H&SC. In furtherance of this Agreement, and pursuant to the Department's applicable statutory authority referenced therein and the land use control requirements of Chapter 6.85 of Division 20 of the H&SC, the Department is requiring this Covenant as part of the remedial actions at the Property. The Site's Remedial Action Plan provides that a deed restriction is required as part of the site remediation because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including volatile organic compounds, remain in the groundwater in and under portions of the Property. The Department circulated the Remedial Action Plan for public review and comment. The Remedial Action Plan was approved by the Department on February 24, 1998. Remediation includes the operation and maintenance of a groundwater extraction system and of groundwater monitoring wells. The locations of the groundwater extraction system and groundwater monitoring wells are shown on the map attached as Exhibit "B". The operation and maintenance of the groundwater extraction system and groundwater monitoring wells is required pursuant to an Operation and Maintenance Manual incorporated into the Operation and Maintenance Agreement between Covenantor and the Department dated March 1, 1999.

1.03 As detailed in the Remedial Action Plan, shallow groundwater at the Property is found from approximately 11 to 25 feet below the ground surface (bgs) and the "B" zone from approximately 35 to 45 feet bgs. Contaminants in the groundwater include trichloroethylene (TCE) (up to 1,300 parts per billion (ppb)). The California drinking water standard for TCE is 5 ppb.

ARTICLE II DEFINITIONS

2.01 Department. "Department" shall mean the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code sections 25355.5(a)(1)(C) and 25398.7 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners/Occupants. Pursuant to Health and Safety Code sections 25355.5(a)(1)(C) and 25398.7, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05 Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01 Prohibited Activities. The following activities shall not be conducted at the Property without prior written approval by the Department:

- (a) Drilling for drinking water, oil or gas.
- (b) Extraction of groundwater for purposes other than site remediation or construction dewatering.

4.02 Non-Interference with Groundwater Extraction and Monitoring Systems. The following activities shall not be conducted at the Property without prior written approval by the Department:

- (a) Activities that may disturb the groundwater extraction system or groundwater monitoring system.
- (b) All uses and development of the Property which do not preserve the integrity and physical accessibility of the groundwater extraction system and groundwater monitoring system.
- (c) The groundwater extraction system and/or groundwater monitoring wells shall not be altered without written approval by the Department.

4.03 Notice to the Department. Owners shall notify the Department of each of the following: (i) The type, cause, location and date of any damage to the groundwater extraction system or groundwater monitoring wells, and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health, or safety, or the environment.

4.05 Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement, shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI
VARIANCE AND TERMINATION

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25398.7.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25398.7.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or for any purposes whatsoever.

7.02 Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Sonoma within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:
Fountaingrove Plaza Associates
703 Second Street, Suite 200
Santa Rosa, California 95404
Attention: Charles Evans, Managing Partner

To Department:
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California-Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention at Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

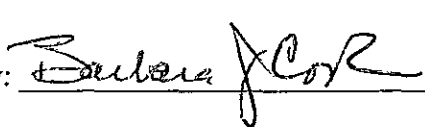
7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

"Covenantor"

Date: 2-26-99 By: 

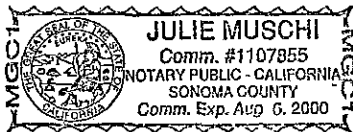
"Department"

Date: 3-1-99 By: 

STATE OF CALIFORNIA)
)
COUNTY OF SONOMA)

On February 26, 1999 before me, a Notary Public in and for State of California,
personally appeared Charles Evans, personally known to me or proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity, and that by his
signature on the instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.



Julie Muschi
Notary's Signature

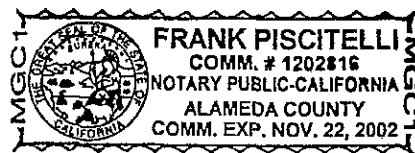
STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On 3/1, 1999 before me, a Notary Public in and for State of California,
personally appeared Barbara Cook, personally known to me or proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that she executed the same in her authorized capacity, and that by her
signature on the instrument, the Department of Toxic Substances Control executed the
instrument.

WITNESS my hand and official seal.



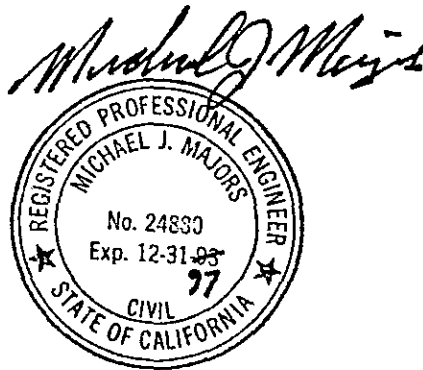
Notary's Signature



PARCEL 2

COMMENCING AT THE INTERSECTION OF THE MOST NORTHERLY CORNER OF PARCEL TWO AND THE WESTERLY LINE OF OLD REDWOOD HIGHWAY AS SHOWN UPON PARCEL MAP NUMBER 6241, FILED JULY 19, 1979, IN BOOK 290 OF MAPS, PAGE 25, SONOMA COUNTY RECORDS; THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF OLD REDWOOD HIGHWAY SOUTH 11° 13'56" EAST 24.43 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING AND LEAVING THE WESTERLY LINE OF OLD REDWOOD HIGHWAY SOUTH 89° 35' 17" WEST 257.50 FEET; THENCE SOUTH 34° 57'50" WEST 663.66 FEET TO THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 101 AS SHOWN ON SAID PARCEL MAP NUMBER 6241, BOOK 290 OF MAPS, PAGE 25; THENCE ALONG THE EASTERLY LINE OF SAID STATE HIGHWAY 101 SOUTH 47° 46'51" EAST 215.00 FEET; THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 101 NORTH 49° 46'16" EAST 480.51 FEET; THENCE NORTH 04° 52'24" EAST 157.14 FEET; THENCE NORTH 78° 46'04" EAST 140.00 FEET TO THE WESTERLY LINE OF SAID OLD REDWOOD HIGHWAY; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF SAID OLD REDWOOD HIGHWAY NORTH 11° 13'56" WEST 24.00 FEET; THENCE LEAVING SAID WESTERLY LINE OF OLD REDWOOD HIGHWAY SOUTH 78° 46'04" WEST 97.36 FEET; THENCE NORTH 11° 13'56" WEST 50.16 FEET; THENCE SOUTH 78° 46'04" WEST 99.68 FEET; THENCE NORTH 10° 55'17" WEST 149.01 FEET; THENCE NORTH 89° 52'56" EAST 199.98 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID OLD REDWOOD HIGHWAY; THENCE NORTHERLY ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID OLD REDWOOD HIGHWAY NORTH 11° 13'56" WEST 15.23 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

CONTAINING 4.34 ACRES MORE OR LESS.



LEGEND

0 25' 50' 100'



○ MW-20 EXISTING MONITORING WELL LOCATION

--- SITE BOUNDARY

— GROUNDWATER EXTRACTION TRENCH

--- BELOWGROUND ELECTRICAL SERVICE IN PVC CONDUIT

--- BELOWGROUND 1" SCH 40 PVC DISCHARGE LINE

TP1 ⊗ EXISTING TRENCH PIEZOMETER

S1 ⊗ EXISTING SUMP

P1 ⊗ EXISTING PIEZOMETER LOCATION

The horizontal layout of the groundwater extraction trench, submersible extraction pump, discharge line and existing manhole are in general conformance with this figure 1 drawing.

Approximate distances are as follows:

PG&E pole to discharge shut off valve 87.5 ft.

PG&E pole to existing manhole 90.5 ft.

Discharge valve to manhole 22.4 ft.

Discharge valve to submersible extraction pump 286 ft. P1

TP1 to S3 235 ft.

Ralph Curran RCE 31586 MW-20

8/13/98

